REMARKS

Reconsideration of the present application is respectfully requested. In the current Office Action, the previous rejection in view of the patent of Schlapfer, No. 5,501,684, has been maintained. In order to narrow the issues to be considered, Applicant has cancelled claims 15-20, leaving claim 1 as the only independent claim.

Claims 1 and 3-8 were said to be anticipated by Schlapfer on the grounds that Schlapfer discloses a flexible element and an element for adjusting the flexibility thereof. It was noted that the element 2 of Schlapfer was "considered flexible because it is able to expand, or deformed, for example, when instrument element 8 is subsequently rotated to expand the element 2 into the connecting element 3 to lock the assembly together." (Office Action at p. 6, lines 3-6). Thus, the "flexibility" found in the element 2 of the Schlapfer device is based on the expandable collet construction illustrated in FIG. 2 of the '684 Patent that allows the element to mechanically expand about the partial slits 24 and full slit 27. See, col. 4, ll. 52-57; col. 5, ll. 14-20.

Thus, the element 2 of Schlapfer is only expandable by the exertion of a force from inside the collet construction, such as by the "form-locking and "force-locking installation of conical head section 11 of the pedicle screw" into the conical borehole 21 in the clamping element 2. See, col. 4, ll. 41-43. There is no disclosure in Schlapfer of the element 2 being compressible or formed of a compressible material. Any compressibility of the element 2 would frustrate the collet-type expansion of the element since the force exerted by the conical head section 11 of the pedicle screw and/or the nut 6 would be absorbed in compressing the element 2, rather than in expanding the element at the slits 24, 27.

In contrast, the clamping feature of Applicants' claimed connector requires compression of the flexible element. This flexible element is configured to expand within the bearing member when compressed. More specifically, the flexible element expands along the longitudinal axis of the stabilization element that spans between vertebrae. Applicant has amended claim 1 to more precisely

define the flexible element and the adjustment element. The limitations added to claim 1 are substantially similar to the limitations in original claim 4, so no new matter is introduced and no new search should be necessary.

The element 2 and nut 6 of Schlapfer do not disclose or contemplate these limitations in amended claim 1. As explained above, the element 2 of Schlapfer expands by expansion of the slits 24, 27 in the collet-type element. The element cannot be compressed by tightening of the nut 6 because as the nut is tightened the conical head section of the pedicle screw is drawn into the conical bore of the element 2, thereby causing the slits to expand. Once the element has fully expanded into the walls of the spherical bore hole 31, any further tightening of the nut 6 cannot cause any further expansion of the element 2. The element 2 of Schlapfer is not a "compressible flexible element" that is configured to expand when the element is compressed. Thus, Schlapfer cannot anticipate Applicants' amended claim 1. Moreover, as explained above, a flexible element constructed as defined in Applicants' claims would frustrate the function of the collet-type mechanism employed in the fixation device of Schlapfer. It would therefore not be obvious to modify the element 2 of Schlapfer to make it compressible and configured to expand when compressed.

In view of the clarifying amendment to claim 1, it is believed that pending claims 1-8 and 31 are novel and non-obvious over the Schlapfer reference. The Examiner is invited to contact the undersigned agent of record if it is believed that a telephonic interview may help place this application in condition for allowance.

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Respectfully submitted,

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